

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAURENCIO L. RODRIGUEZ,

Petitioner,

v.

CASE NO. 15-11155
HONORABLE GEORGE CARAM STEEH

ERICA HUSS,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION FOR A COPY OF
THE RULE 5 MATERIALS [Dkt. #15] AND GRANTING THE STATE'S
MOTION TO FILE ITS ANSWER INSTANTER [Dkt. #17]**

Petitioner Laurencio L. Rodriguez commenced this action in 2015 by filing a pro se habeas corpus petition under 28 U.S.C. § 2254 and a motion to hold the petition in abeyance while he pursued state remedies. See Dkt. #1 and #3. At the time, petitioner was incarcerated at the Ionia Correctional Facility in Ionia, Michigan where he was serving a sentence of 450 to 840 months for second-degree murder. On April 21, 2015, the Court granted petitioner's motion for a stay and closed this case for administrative purposes. See Dkt. #6.

Petitioner then pursued state collateral remedies, and on October 2, 2017, he filed an amended habeas corpus petition and a motion to re-open this case. See Dkt.

#11. By then, he had been transferred to the Marquette Branch Prison in Marquette, Michigan where Erica Huss was the warden.

On April 13, 2018, the Court granted petitioner's motion to re-open this case and ordered the Clerk of Court to serve the amended petition on the Michigan Attorney General and on warden Huss at the Marquette Branch Prison. See Dkt. #13. In the same order, the Court directed the State to file the relevant state-court materials and a response to the amended petition within six months of the Court's order. Now before the Court are the State's motion for leave to file its answer instanter and petitioner's motion for a copy of all Rule 5 materials.¹

The State's Motion

The State seeks permission to file an answer to the habeas petition and the Rule 5 materials within ninety days of the date of its motion, which was filed on

¹ Under Rule 5(c) of the Rules Governing Section 2254 Cases, "[t]he respondent must attach to the answer parts of the transcript that the respondent considers relevant." Rule 5(d) requires the respondent also to

file with the answer a copy of:

- (1) any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;
- (2) any brief that the prosecution submitted in an appellate court relating to the conviction or sentence; and
- (3) the opinions and dispositive orders of the appellate court relating to the conviction or the sentence.

January 8, 2019. The State points out that it was not served with the initial habeas petition or the Court's order staying this case on April 21, 2015. The State also alleges that neither the Michigan Attorney General, nor petitioner's warden at Marquette Branch Prison, received timely notice of the Court's order dated April 13, 2018, which directed the State to file a responsive pleading within six months. As a result, the State did not respond to the amended petition.

The docket confirms the State's allegations. The Court did not serve the initial petition or the order granting a stay on the State because there was no need for a responsive pleading at that time. When the Court subsequently re-opened this case on April 13, 2018, and ordered the State to file a responsive pleading, the order was sent to petitioner, but not to the Michigan Attorney General or to petitioner's warden at the Marquette Branch Prison. See Dkt. #13; see also the text-only certificate of service dated April 25, 2018.

On December 13, 2018, the Court realized that the State had not been served with its order dated April 13, 2018. The Court then sent its April 13, 2018 order to the Michigan Attorney General and to warden Huss. See text-only certificate of service dated December 13, 2018. The Michigan Attorney General filed an appearance in this case six days later, see Dkt. #16, and now seeks permission to file its answer by April 8, 2019.

The Court excuses the State's failure to file a timely response to the amended petition because the State was not at fault. Instead, the Court failed to ensure that the State was sent a copy of the April 13, 2018 order re-opening this case and directing the State to file a responsive pleading. Accordingly, the Court grants the State's Motion to file its answer and the Rule 5 materials instanter. The responsive pleading and the Rule 5 materials shall be due no later than April 8, 2019. Petitioner shall have forty-five days from the date of the responsive pleading to file a reply.

Petitioner's Motion

Petitioner seeks a copy of all transcripts, police reports, exhibits, lower court motions and briefs, and any documents pertaining to this case. He alleges that the Michigan Department of Corrections misplaced his legal materials and that the States gave him only \$100.00 in compensation even though the missing materials consist of thousands of pages and the state court charges \$1.00 per page to copy court documents.

Section 2250 of Title 28, United States Code, provides that,

[i]f on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

The Court previously granted petitioner's application to proceed in forma pauperis in this case, see Dkt. #5, and his legal materials apparently have been lost

through no fault of his own. The Court, therefore, grants petitioner's motion. Upon receipt of the Rule 5 materials from the State, the Court will send petitioner a copy of the transcript of trial and any other Rule 5 materials that the Court deems relevant to the issues listed in the amended habeas petition.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: February 7, 2019

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record and
Laurencio L. Rodriguez #649211, 1960 U.S. Hwy. 41 South,
Marquette, MI 49855 on
February 7, 2019, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk